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09/936,251	09/07/2001	Bernard Vallee	05-804	2488

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EXAMINER

MCPARTLIN, SARAH BURNHAM

ART UNIT PAPER NUMBER

3636

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/936,251

Applicant(s)

VALLEE, BERNARD

Examiner

Sarah B. McPartlin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,5,8,10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-2, 4-5, 8 and 10-11 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The phrase "the horizontal axles" (claim 1, line 8; claim 2, line 2) lacks sufficient antecedent basis.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-2, 4-5, 8 and 10-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With respect to claim 1, the specification does not reasonably provide enablement for an arm mounted so that it can slide in a rail secured to said seat. While Figure 3 may disclose a slide rail arrangement, it is unclear how this sliding rail arrangement functions in conjunction with the pivoting motion shown in Figures 1 and 2. It is not shown how seat (20) can firstly pivot on axle (24), which is carried by arm (22),

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and slide by way of rail arrangement (54)(56) with respect to arm (22). This may (or may not) be possible if pivot (24) is carried on rail (54), but this fact was not originally disclosed. On page 8, lines 15-26, Applicant describes the relationship between rail (54), track (56) and axle (24). It is unclear how seat (20) can pivot about axle (24) and slide along rail (54).

Claims 2, 4-5, 8 and 10-11 are rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4, 8 and 10 are rejected under 35 U.S.C. 103(a) as being anticipated by Sherman (3,594,037) in view of Cluff (1,231,129). Sherman reveals a cabin attendant chair with a seat (20), an underframe (10) with a longitudinal axis extending from the upper right hand corner of underframe (10) in Figure 2 to the lower left hand corner, a backrest (46) and a fixed horizontal axle (24). Seat (20) comprises a first part (26) and a second part (32)(38). The second part (32)(38) is received through a rectangular opening located above panel (18) within underframe (10). The length of the portion of the second part (32)(38) received within underframe (10) is smaller than the diameter of underframe (10) given that no portion of second part (32)(38) extends out

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the backside of underframe (10). Underframe (10) contains a gas strut (40). Horizontal axle (24) is carried by an intermediate part in the form of an arm (50) fixed to the longitudinal axis of underframe (10) and rotatable about pivot point (30). Figure 2 reveals by means of phantom lines how the distance from horizontal axle (24) to the longitudinal axis of underframe (10) is variable.

The longitudinal axis lies parallel to the backrest (46) and connects the upper right corner of under frame (10) in Figure 2 with the lower left corner of underframe (10). Given that the figure reveals an underframe (10) whose width is approximately equal to one-fifth its height, the angle of the longitudinal axis is approximately  $11^\circ$  ( $\tan^{-1}(1/5) = 11.3^\circ$ ). The underframe (10) has a first part defined by side supports (12) and a second part (56)(54) telescopically received within the first part defined by side supports (12). The first part defined by side supports (12) takes up the vertical forces exerted by an occupant sitting on seat (20). The second part (56)(54) takes up the horizontal forces exerted by a seat occupant resting their head against the second part (56)(54).

As disclosed above, Sherman shows all claimed elements except a rail secured to the seat to allow an arm to slide.

Cluff teaches the use of rails (26) secured to seat (12). Arms (29) slide to different positions within rails (26) depending upon the angle of the seat.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the cabin attendant seat of Sherman with the teachings of Cluff. Incorporating a rail into the side of Sherman's cabin attendant seat would allow

the horizontal axle to move based on the angle of the seat, therefore providing support at a variety of seat angles and increasing the comfort of the user.

6. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman (3,594,037) in view of Cluff (1,231,129), as applied to claim 1 above, and further in view of Vander Stel et al. (5,026,118). As described above, Sherman, as modified, discloses all claimed elements except a distance between the longitudinal axis and the horizontal axle in the range of 2 to 15 cm and a rail.

Vander Stel et al. reveals a foundation (37) that forms a "two inch deep basket" (column 3, line 6). The back of foundation (37) corresponds with the longitudinal axis of the seating unit. Figure 3 reveals a horizontal axle (35) which is located approximately twice the width of basket (37) from the longitudinal axis. Horizontal axle (35) is therefore approximately 4 inches (6.16 cm) from the longitudinal axis. Vander Stel et al. also reveals a rail (60)(61)(63) which alters the position of horizontal axle (35) with respect to seat (17) based on the angle at which element (41) is deployed.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the cabin attendant seat of Sherman, ad modified, with the teachings of Vander Stel et al. The modification of limiting a distance between the longitudinal axis and the horizontal axle to a range of 2-15 cm would ensure that the seat has a very narrow profile and can be installed in cramped areas such as airplane galleys. The inclusion of a rail would allow for greater seat adjustment capabilities and therefore more comfort for the seat occupant.

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7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman (3,594,037) in view of Cluff (1,231,129 as applied to claim 1 above, and further in view of Betherum (928,929). As disclosed above, Sherman, as modified, reveals all claimed elements except a work surface.

Betherum teaches the incorporation of a work surface (14) within a telescopically received second element (13) of an underframe (5).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the cabin attendant seat of Sherman, as modified, with the teachings of Betherum. The incorporation of a work surface on the backside of Sherman's cabin attendant seat would provide a convenient additional surface area for preparing food for flight passengers.

### ***Response to Amendment/Arguments***

8. The amendment filed on January 30, 2006 has been considered in its entirety. Remaining issues are detailed in the section above.

Applicant directs attention to the embodiment of Figures 6 and 7 where there is shown an arm and a rail attached to the seat in which an end of the arm slides. The Examiner does not agree that this embodiment pertains to claim 1. Claim 1 requires a fixed horizontal axis. The horizontal axis disclosed in Figures 6 and 7 moves along the rail and is therefore not fixed. For this reason, claim 1 would appear to be directed to the embodiment depicted in Figures 1 and 2. Furthermore, claim 1 requires that another end of said gas strut be fixed to said second part of said seat. Figures 6 and 7

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clearly disclose that the other end of the gas strut is not fixed to the seat. Figure 6 shows the second end of the gas strut in one location relative to the seat (20) and Figure 7 shows the second end of the gas strut in a second location relative to seat (20). Therefore, Figures 6 and 7 do not disclose a second end of the gas strut that is fixed to the seat. For this reason, claim 1 would appear to be directed to the embodiment depicted in Figure 1-2. A single claim must be drawn to a single disclosed embodiment and not a combination of pieces from one embodiment and pieces from a second embodiment that is not disclosed as working together as a single invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner maintains that it is appropriate to combine the teachings of the Sherman and Cluff references. The addition of an arm and rail as taught by Cluff would create improved support for the seat (20) disclosed by Sherman. Applicant states that the vertical rails (36) and (88) of Sherman solve the technical problem of stopping the movement of the seat in its opened position and its closed position. The Examiner agrees that this is the case, however the addition of a slide rail to the seat (20) would solve a second problem.



The additional slide rail and arm configuration would provide increased seat support (20) for users of various weights.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBM

  
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